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CONTENTS

A GLIMPSE OF THE LIFE OF AN ESSEX COUNTY JUDGE

SAMUEL PUTNAM

ASSOCIATE JUSTICE OF THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS FROM 1814-1842

*Presented at the Annual Meeting
of the
Massachusetts Bar Association, at Salem, October 14, 1922.*

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Sworn to and subscribed before me this 26th day of September, 1922.

JOHN M. MAGUIRE,
Notary Public.

(My commission expires February 16, 1928.)

[S.M.L.]

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SAMUEL PUTNAM.

Essex County has contributed greatly to the strength and reputation of the courts and of the bar of Massachusetts by the character and intellectual force of the men whom it has given to the profession. It is only necessary to mention the names of Theophilus Parsons, Joseph Story, and Rufus Choate as examples of a long list of distinguished Essex lawyers. Some of them are better known than others. Samuel Putnam, who served as an Associate Justice of the Supreme Judicial Court for 28 years, from 1814 until 1842, is not as well known to the bar today as he deserves to be and as he was known during his service on the bench. A portrait of Judge Putnam was reproduced, among the other portraits of justices of the Supreme Judicial Court, in the November number of the "Massachusetts Law Quarterly" for 1920. A less well-known, but striking, picture of him, taken from an old daguerreotype, has recently come into my possession, and it seems peculiarly fitting that it should be reproduced at the annual meeting of members of the Massachusetts Bar Association in Salem as the guests of the Essex County bar. This picture of him was evidently taken after he resigned from the bench in 1842.

Judge Putnam was born in Danvers on May 13, 1768, the only child of a family of ten to survive to maturity. His father, Gideon Putnam, appears to have begun life as a carpenter and farmer, with an inheritance consisting of his character and thirteen acres of land. Later, I believe, he became the proprietor of the old tavern at Tapleville. The boy entered Harvard College at the age of fifteen and graduated with John Quincy Adams in the Class of 1787. He immediately began to study law in the office of "Master Bradbury," as he was called, later Judge Bradbury, in Newburyport, where, as he says, "I soon became satisfied that the law did not come by inspiration; and in some degree made up by industry for my idleness in College." After leaving Judge Bradbury's office he soon entered active practice, acquiring a reputation, rare at that period, as a master of commercial law. This reputation he developed still further on the bench after his appointment in 1814. As an appreciation of his contribu-



SAMUEL PUTNAM

1768-1853

Associate Justice Supreme Judicial Court of Massachusetts
1814-1842

From a daguerreotype

tions to this branch of the law, in 1841 Judge Story dedicated to him his "Commentaries on the Law of Partnership," as follows:

"To the Honorable
SAMUEL PUTNAM, LL.D.,

one of the Justices of the Supreme Judicial Court
of Massachusetts.

Sir:

It is with great satisfaction that I dedicate this work to you. It is devoted to the exposition of a branch of that great System of Commercial Law, which constituted a favorite study in your early professional life, and which, since your elevation to the Bench, you have administered with eminent ability and success. No one, therefore, is better qualified than yourself, to appreciate the importance and difficulty of such a task, and the indulgent consideration, to which even an imperfect execution of it may be fairly entitled. But I desire, also, that this Dedication may be deemed, on my part, a voluntary tribute of respect to your personal character, adorned, as it is, by the virtues, which support, and the refinements, which grace, the unsullied dignity of private life. I recollect with pride and pleasure, that I was your pupil in the close of my preparatory studies for the Bar; and, even at this distance of time I entertain the most lively gratitude for the various instruction, ready aid, and uniform kindness, by which you smoothed the rugged paths of juridical learning, in mastering which, an American student might then well feel no little discouragement, since his own country scarcely afforded any means, either by elementary Treatises or Reports, to assist him in ascertaining what portion of the Common Law was here in force, and how far it had been modified by local usages, or by municipal institutions, or by positive laws.

I trust that you may live many years to enjoy the honors of your present high station; and I may be allowed to add, that, out of the circle of your own immediate family, no one will be more gratified than myself, in continuing to be a witness of the increasing favor, with which



SARAH (GOOLL) PUTNAM
(Mrs. Samuel Putnam)
1772-1864
From a daguerreotype

your judicial labors are received by the public, and of your possession of that solid popularity, which (to use the significant language of Lord Mansfield) follows, and is not run after, in the steady administration of civil justice.

I am, with the highest respect, truly

Your obliged friend,

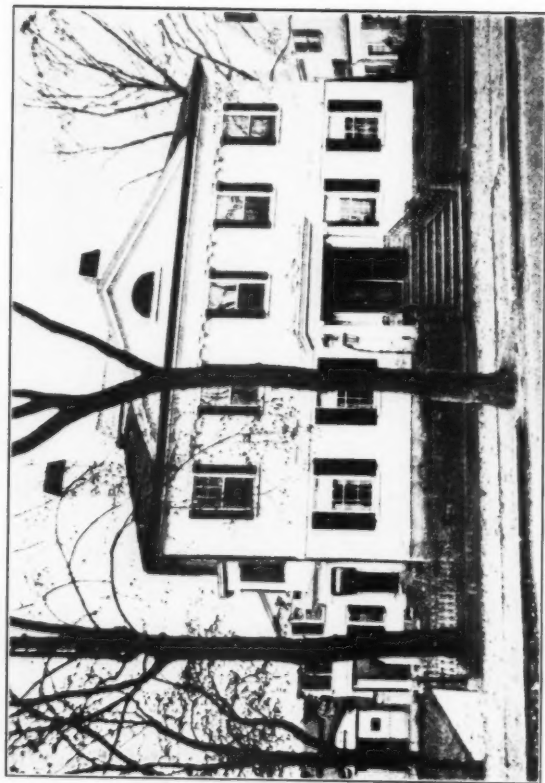
JOSEPH STORY."

Cambridge, Massachusetts.

November, 1841.

Some years ago, I remember happening upon an interesting appreciation of his opinions on commercial law in a judgment of Lord Justice James in a case in the English Law Reports. Judge Putnam's opinions on the law of partnership, and other commercial matters, are likely to repay study today. In a discriminating opinion, based on a grasp of the actual business relations and intentions of the parties, in *Rice v. Austin* (17 Mass. 197), in 1821, he disposed of the oracular and erroneous pronouncement of Chief Justice Eyre in *Waugh v. Carver* (2 H. Bl. 235), which caused so much trouble in the law of partnership until, and, indeed, after, the case of *Cox v. Hickman* in the House of Lords in 1860. If Judge Putnam's reasoning in *Rice v. Austin* had been more closely studied, much later confusion in the law of partnership might, perhaps, have been avoided in Massachusetts.* Judge Putnam was also one of the judges who presided at the celebrated White murder case in 1830. He was one of the appointees of Governor Caleb Strong of Northampton, to whose judgment of men in his appointments to the bench Massachusetts owes much. Samuel Sewall, Simeon Strong, George Thacher, Theodore Sedgewick, Isaac Parker, Theophilus Parsons (Chief Justice), Samuel Sewall (Chief Justice), Charles Jackson, Daniel Dewey, Isaac Parker (Chief Justice), Samuel Putnam and Nathaniel S. Wilde were all appointed by Governor Strong. Of these Sewall, Parsons, Putnam and Wilde were from Essex County.

* See Appendix to Report of Committee on Legislation of the Massachusetts Bar Association for 1915, pp. 82, 89, relating to the Uniform Partnership Act, which has now been adopted in Massachusetts and goes into effect January 1st, 1923.



RESIDENCE OF JUDGE PUTNAM IN SALEM
(The Assembly House, Federal Street)

The impression which Judge Putnam made upon people generally is suggested by the words, "Oh! I like him," which appears to have been a common remark among those who came in contact with him. In a brief autobiographical account in a letter to a classmate written in 1839, he describes himself as having been idle in college, but having been kept out of harm's way, to some extent, by his love of music.

After entering practice, he says,

"My first cause was to recover back seven shillings and sixpence which my client, a rich, tough, farmer and townsman, had been compelled to pay as an illegal tax. It involved principles much beyond the value of the sum in dispute. Mr. Pulling argued for the defendants, but my client prevailed."

While a member of the bar, he served in the legislature from 1808-1814, sometimes in the Senate and sometimes in the House.

In regard to his judicial service, he says,

"I held the office nearly 28 years and was not by sickness or any other cause prevented from attending the court by one-half as many days as I served years.

"I had to travel with my own horse and sulkey, which was contrived to be open or closed, so as to be as comfortable in fair as in stormy weather. In this way I passed over mountain and dale, frequently alone in the night time when it was so dark that I could not see my horse, over roads that were miry and rocky, without once overturning or any personal injury.

"During sessions I used to ride my horse on the saddle (which I carried with me) a few miles almost every day, disregarding a little rain or snow or much cold. I have still the free use of my limbs and continue to ride on horseback."

In this connection, it should be remembered that from 1814, when he was appointed, until 1820, Massachusetts included Maine and the judicial circuits which he was obliged to travel in the manner described must, therefore, have covered both states during that period.

Until 1833, he lived during the winters in the so-called "Assembly House" on Federal Street in Salem, an attractive

picture of which is also reproduced here. In 1795, he married Sarah Gool of Danvers, the daughter of a merchant who had emigrated from Paisley, Scotland, and married a daughter of Deacon Timothy Pickering. As her portrait, reproduced from a daguerreotype taken, apparently, at about the same time as that of her husband, is also a striking one, it is here reproduced to fill out this glimpse of the life of a strong character, an effective lawyer and judge of his day, who, by his service, made a distinct position for himself in the professional history of Massachusetts.

F. W. GRINNELL.

Note.

The portraits, here reproduced, are taken from a pamphlet, recently issued by the Danvers Historical Society, which contains further information about him and various letters, one of which gives some interesting information about Gen. Israel Putnam.

In another letter written in 1848 about Judge Story to his son, William Wetmore Story, Judge Putnam describes a practice of the Essex bar, which is particularly interesting today, in view of certain recommendations of the recent Judicature Commission relative to the need of developing the practice of defining issues before trial. Judge Putnam says of Judge Story:

"He commenced the study of the law in the office of Mr. Sewall of Marblehead and came into my office at Salem upon the appointment of Mr. Sewall" to the Supreme Court. "As soon as he left my office he was admitted to the bar of the County of Essex. And I must say one word of the faithful manner in which he practised with us there. The habit of that bar was to disclose freely to the adverse counsel the points which were to be controverted or admitted, *whereby much expense to clients was saved*. What out of court was agreed to be admitted was always admitted on trial, and so much expense and trouble of witnesses was prevented. No traps were set. But the debatable ground was maintained with as much earnestness as was consistent with good breeding. And in all this your father well played his part. Those agreements were uniformly verbal, but always performed."

